

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

JOHNNY JONES,

Plaintiff,

v.

JERRY HOWELL, *et al.*,

Defendants.

Case No. 3:21-cv-00030-MMD-CLB

ORDER DISMISSING CASE AND  
GRANTING APPLICATION TO  
PROCEED IN FORMA PAUPERIS

Plaintiff Johnny Jones brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 8.) On October 29, 2021, this Court ordered Jones to file a second amended complaint by November 28, 2021. (ECF No. 9.) The Court warned Jones that the action could be dismissed if he failed to file a second amended complaint by that deadline. (*Id.* at 10.) That deadline expired and Jones did not file a second amended complaint, move for an extension, or otherwise respond.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition  
2 of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*  
3 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
4 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

5 The first two factors, the public's interest in expeditiously resolving this litigation  
6 and the Court's interest in managing its docket, weigh in favor of dismissal of Jones's  
7 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
8 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
9 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542  
10 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
11 cases on their merits—is greatly outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can  
13 be used to correct the party's failure that brought about the Court's need to consider  
14 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
15 that considering less drastic alternatives *before* the party has disobeyed a court order  
16 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
17 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that  
18 “implicitly accepted pursuit of last drastic alternatives prior to disobedience of the court's  
19 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled  
20 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).  
21 Courts “need not exhaust every sanction short of dismissal before finally dismissing a  
22 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779  
23 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and  
24 unless Jones files a second amended complaint, the only alternative is to enter a second  
25 order setting another deadline. But the reality of repeating an ignored order is that it often  
26 only delays the inevitable and squanders the Court's finite resources. The circumstances  
27 here do not indicate that this case will be an exception: there is no hint that Jones needs  
28 additional time or evidence that he did not receive the Court's screening order. Setting

1 another deadline is not a meaningful alternative given these circumstances. So the fifth  
2 factor favors dismissal.

3 Having thoroughly considered these dismissal factors, the Court finds that they  
4 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without  
5 prejudice based on Jones's failure to file a second amended complaint in compliance with  
6 this Court's October 29, 2021, order and for failure to state a claim. The Clerk of Court is  
7 directed to enter judgment accordingly and close this case. No other documents may be  
8 filed in this now-closed case. If Jones wishes to pursue his claims, he must file a complaint  
9 in a new case.

10 It is further ordered that the application to proceed *in forma pauperis* (ECF No. 1)  
11 is granted. This status doesn't relieve Jones of his obligation to pay the full \$350 filing fee  
12 under the statute; it just means that he can do it in installments. And the full \$350 filing  
13 fee remains due and owing even though this case is being dismissed.

14 To ensure that Jones pays the full filing fee, it is further ordered that the Nevada  
15 Department of Corrections must pay to the Clerk of the United States District Court,  
16 District of Nevada, 20% of the preceding month's deposits to the account of **Johnny**  
17 **Jones, #82533** (in months that the account exceeds \$10.00) until the full \$350 filing fee  
18 has been paid for this action. The Clerk of Court is directed to send a copy of this order:  
19 (1) to the Finance Division of the Clerk's Office; and (2) to the attention of **Chief of Inmate**  
20 **Services for the Nevada Department of Corrections**, P.O. Box 7011, Carson City, NV  
21 89702.

22 DATED THIS 13<sup>th</sup> Day of December 2021.

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25 MIRANDA M. DU  
26 CHIEF UNITED STATES DISTRICT JUDGE  
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